



Rule and Interpretive/Policy Statement Review Checklist
(This form must be filled out electronically.)

This form is to be used when the current version of the rule(s) has/have not previously been reviewed. When reviewing an interpretive or policy statement, this document is to be used only if the review of the statement is not in conjunction with the review of a rule.

All responses should be **bolded**.

Document(s) Reviewed (include title): **WAC 458-20-226 (Landscape and horticultural services)**

Date last adopted/issued: **May 14, 1999**

Reviewer: **Sue Goldstein**

Date review completed: **August 25, 2003**

Briefly explain the subject matter of the document(s):

Rule 226 implements RCW 82.04.050(3)(e), which includes "landscape maintenance and horticultural services" in the definition of "sale at retail" or "retail sale."

Type an "X" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

1. Public requests for review:

YES	NO	
	X	Is this document being reviewed at this time because of a public (e.g., taxpayer or business association) request?

If "yes," provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request.

2. Need:

YES	NO	
X		Is the document necessary to comply with the statutes that authorize it? (E.g., Is it necessary to comply with or clarify the application of the statutes that are being implemented? Does it provide detailed information not found in the statutes?)
	X	Is the information provided in the document so obsolete that it is of little value, warranting the repeal or revision of the document?
	X	Have the laws changed so that the document should be revised or repealed? (If the response is "yes" that the document should be repealed, explain and identify the statutes the rule implemented, and skip to Section 10.)
X		Is the document necessary to protect or safeguard the health, welfare (budget



		levels necessary to provide services to the citizens of the state of Washington), or safety of Washington's citizens? (If the response is "no", the recommendation must be to repeal the document.)
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Please explain.

This rule is necessary to clarify the taxability of landscape maintenance and horticultural services. The rule assists persons who perform landscape and horticultural services by advising them of their B&O, retail sales, and use tax liabilities.

3. Related interpretive/policy statements, court decisions, BTA decisions, and WTDs:

Complete Subsection (a) only if reviewing a rule. Subsection (b) should be completed only if the subject of the review is an interpretive or policy statement. Excise Tax Advisories (ETAs), Property Tax Advisories and Bulletins (PTAs/PTBs), and Interim Audit Guidelines (IAGs) are considered interpretive and/or policy statements.

(a)

YES	NO	
	X	Are there any interpretive or policy statements that should be incorporated into this rule? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any interpretive or policy statements that should be cancelled because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any Board of Tax Appeals (BTA) decisions, court decisions, or Attorney General Opinions (AGOs) that provide information that should be incorporated into this rule?
	X	Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the rule?

(b)

YES	NO	
		Should this interpretive or policy statement be incorporated into a rule?
		Are there any Board of Tax Appeals (BTA) decisions, court decisions, or Attorney General Opinions (AGOs) that affect the information now provided in this document?
		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the document?

If the answer is "yes" to any of the questions in (a) or (b) above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.



4. Clarity and Effectiveness:

YES	NO	
X		Is the document written and organized in a clear and concise manner?
	X	Are citations to other rules, laws, or other authority accurate? (If no, identify the incorrect citation below and provide the correct citation.)
X		Is the document providing the result(s) that it was originally designed to achieve? (E.g., does it reduce the need for taxpayers to search multiple rules or statutes to determine their tax-reporting responsibilities or help ensure that the tax law and/or exemptions are consistently applied?)
	X	Do changes in industry practices warrant repealing or revising this document?
	X	Do administrative changes within the Department warrant repealing or revising this document?

Please explain.

The rule accomplishes the results it was intended to achieve. It provides a single rule for providers of landscape and horticultural services. It directs providers of silvicultural activities or horticultural services for farmers to applicable rules. However, the citation to WAC 458-20-135 is incorrect and should be changed when this rule is next revised. The taxability of persons engaged in silviculture activities is addressed in WAC 458-20-13501.

5. Intent and Statutory Authority:

YES	NO	
X		Does the Department have sufficient authority to adopt this document? (Cite the statutory authority in the explanation below.)
X		Is the document consistent with the legislative intent of the statute(s) that authorize it? (I.e., is the information provided in the document consistent with the statute(s) that it was designed to implement ?) If "no," identify the specific statute and explain below. List all statutes being implemented in Section 9, below.)
	X	Is there a need to recommend legislative changes to the statute(s) being implemented by this document?

Please explain.

RCW 82.32.300 authorizes the Department of Revenue to make and publish rules. The Department is also provided rule-making authority by RCW 82.01.060(2).

RCW 82.04.050(3)(e) defines "sale at retail" and "retail sale" to include the sale of or charge made for landscape maintenance and horticultural services except for horticultural services provided to farmers and certain landscape maintenance provided by or at the direction of an electric utility.



6. Coordination: Agencies should consult with and coordinate with other governmental entities that have similar regulatory requirements when it is likely that coordination can reduce duplication and inconsistency.

YES	NO	
	X	Could consultation and coordination with other governmental entities and/or state agencies eliminate or reduce duplication and inconsistency?

Please explain.

The Department of Revenue has the exclusive authority to administer the B&O, sales, and use taxes with respect to landscape and horticultural services.

7. Cost: When responding, consider only the costs imposed by the document being reviewed and not by the statute.

YES	NO	
	X	Have the qualitative and quantitative benefits of the document been considered in relation to its costs? (Answer “yes” only if a Cost Benefit Analysis was completed when the rule was last adopted or revised.)

Please explain.

This is an interpretive rule that does not impose any new or additional administrative burdens on taxpayers that are not imposed by law.

8. Fairness: When responding, consider only the impacts imposed by the document being reviewed and not by the statute.

YES	NO	
X		Does the document result in equitable treatment of those required to comply with it?
	X	Should it be modified to eliminate or minimize any disproportionate impacts on the regulated community?
	X	Should the document be strengthened to provide additional protection to correct any disproportionate impact on any particular segment of the regulated community?

Please explain.

The information provided in Rule 226 applies equally to all similarly situated taxpayers.

9. LISTING OF DOCUMENTS REVIEWED: Use “bullets” with any lists, and include documents discussed above. Citations to statutes, interpretive or policy statements, and similar documents should include titles. Citations to Attorney General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).



Statute(s) Implemented: **The following statutes are implemented to the extent they apply to persons providing landscape and horticultural services to customers other than farmers.**

- **RCW 82.04.040—“Sale,” “casual sale”;**
- **RCW 82.04.050—“Sale at retail,” “retail sale”;**
- **RCW 82.04.060—“Sales at wholesale,” “wholesale sale”;**
- **RCW 82.04.070—“Gross proceeds of sales”;**
- **RCW 82.04.080—“Gross income of the business”;**
- **RCW 82.04.190—“Consumer”;**
- **RCW 82.04.220—Business and occupation tax imposed;**
- **RCW 82.04.250—Tax on retailers;**
- **RCW 82.04.270—Tax on wholesalers, distributors;**
- **RCW 82.04.280—Tax on printers, publishers, highway contractors, extracting or processing for hire, cold storage warehouse or storage warehouse operation, insurance general agents, radio and television broadcasting, government contractors--Cold storage warehouse defined--Storage warehouse defined--Periodical or magazine defined;**
- **RCW 82.04.290—Tax on international investment management services or other business or service activities**
- **RCW 82.08.010—Definitions;**
- **RCW 82.08.020—Tax imposed—Retail sales--Retail car rental;**
- **RCW 82.12.010—Definitions; and**
- **RCW 82.12.020—Use tax imposed.**

Interpretive and/or Policy Statements (e.g., ETAs, PTAs, IAGs): **None**

Court Decisions: **None**

Board of Tax Appeals Decisions (BTAs): **None**

Appeal Division Decisions (WTDs):

- **20 WTD 367 (2001) - (M&E exemption under RCW 82.08.02565 does not apply in case of seller of chainsaws to taxpayer who performs only tree thinning and slashing in standing forests.)**

Attorney General Opinions (AGOs): **None**

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):

- **Special Notice dated April 2002 originally published August 6, 2000, regarding tax application for tree and/or stump removal from existing orchards for farmers.**



10. Review Recommendation:

- X **Amend**
- Repeal/Cancel** (Appropriate when action is not conditioned upon another rule-making action or issuance of an interpretive or policy statement.)
- Leave as is** (Appropriate even if the recommendation is to incorporate the current information into another rule.)
- Begin the rule-making process for possible revision.** (Applies only when the Department has received a petition to revise a rule.)

Explanation of recommendation: Provide a brief summary of your recommendation. If recommending that the rule be amended, be sure to note whether the basis for the recommendation is to:

- Correct inaccurate tax-reporting information now found in the current rule;
- Incorporate legislation;
- Consolidate information now available in other documents (e.g., ETAs, WTDs, and court decisions); or
- Address issues not otherwise addressed in other documents (e.g., ETAs, WTDs, and court decisions).

While there is no need to revise the subject matter in this rule at this time, the Department should consider changing the citation of WAC 458-20-135 to WAC 458-20-13501 via the expedited adoption process.

11. Manager action: Date: 8/26/03

 AL Reviewed and accepted recommendation

Amendment priority:

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